

AMENDED IN ASSEMBLY AUGUST 16, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1255

Introduced by Senator Wright

February 23, 2012

An act to amend Section 226 of the Labor Code, relating to employee compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1255, as amended, Wright. Employee compensation: itemized statements.

Existing law requires every employer, semimonthly or at the time of each payment of wages, to furnish each employee an accurate itemized statement in writing showing specified information, including, among other things, the name of the employee and the last 4 digits of his or her social security number or an employee identification number, the gross wages earned, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, and the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined, the name and address of the legal entity that secured the services of the employer. Existing law provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with this requirement is entitled to recover the greater of all actual damages or a specified sum, not exceeding an aggregate penalty of \$4,000, and is entitled to an award of costs and reasonable attorney's fees.

This bill would provide that an employee is deemed to suffer injury for purposes of the above-referenced penalty if the employer fails to provide a wage statement ~~or fails to provide a wage statement showing the name of the employee and the last 4 digits of his or her social security number or employee identification number.~~ The bill would also provide that an employee is deemed to suffer injury for that penalty if the employer fails to provide accurate and complete information, as specified, and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross ~~and or~~ net wages paid to the employee during the pay period ~~and how those gross and net wages were determined by reference only to specified information on the itemized wage statement or other specified information,~~ the deductions the employer made from the gross wages to determine the net wages paid to the employee during the pay period, ~~and~~ the name and address of the employer or legal entity that secured the services of the employer, ~~and the name of the employee and only the last 4 digits of his or her social security number or an employee identification number other than a social security number,~~ as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 226 of the Labor Code is amended to
2 read:
3 226. (a) Every employer shall, semimonthly or at the time of
4 each payment of wages, furnish each of his or her employees,
5 either as a detachable part of the check, draft, or voucher paying
6 the employee's wages, or separately when wages are paid by
7 personal check or cash, an accurate itemized statement in writing
8 showing (1) gross wages earned, (2) total hours worked by the
9 employee, except for any employee whose compensation is solely
10 based on a salary and who is exempt from payment of overtime
11 under subdivision (a) of Section 515 or any applicable order of
12 the Industrial Welfare Commission, (3) the number of piece-rate
13 units earned and any applicable piece rate if the employee is paid
14 on a piece-rate basis, (4) all deductions, provided that all deductions
15 made on written orders of the employee may be aggregated and
16 shown as one item, (5) net wages earned, (6) the inclusive dates
17 of the period for which the employee is paid, (7) the name of the

employee and *only* the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement ~~or if the wage statement fails to comply with item (7) of subdivision (a).~~

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one *or more* of items (1) to ~~(6); (8), or (9), inclusive,~~ of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages ~~and~~ *or* net wages paid to the employee during the pay period ~~and how those gross and net wages were determined by reference only to the information or any of the other information required to be provided on the itemized wage statement provided pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).~~

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. *Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).*

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) *The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.*

(C) For purposes of this paragraph, "promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

1 (3) For purposes of this subdivision, a “knowing and intentional
2 failure” does not include an isolated and unintentional payroll error
3 due to a clerical or inadvertent mistake. In reviewing for
4 compliance with this section, the ~~hearing officer or~~ factfinder may
5 consider as a relevant factor whether the employer, prior to an
6 alleged violation, has adopted and is in compliance with a set of
7 policies, procedures, and practices that fully comply with this
8 section.

9 (f) A failure by an employer to permit a current or former
10 employee to inspect or copy records within the time set forth in
11 subdivision (c) entitles the current or former employee or the Labor
12 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
13 penalty from the employer.

14 (g) The listing by an employer of the name and address of the
15 legal entity that secured the services of the employer in the itemized
16 statement required by subdivision (a) shall not create any liability
17 on the part of that legal entity.

18 (h) An employee may also bring an action for injunctive relief
19 to ensure compliance with this section, and is entitled to an award
20 of costs and reasonable attorney’s fees.

21 (i) This section does not apply to the state, to any city, county,
22 city and county, district, or to any other governmental entity, except
23 that if the state or a city, county, city and county, district, or other
24 governmental entity furnishes its employees with a check, draft,
25 or voucher paying the employee’s wages, the state or a city, county,
26 city and county, district, or other governmental entity shall use no
27 more than the last four digits of the employee’s social security
28 number or shall use an employee identification number other than
29 the social security number on the itemized statement provided with
30 the check, draft, or voucher.